

§ 39.11

§ 39.11 [Reserved]

§ 39.13 When must PVOs comply with the provisions of this part?

You are required to comply with the requirements of this part beginning November 3, 2010, except as otherwise provided in individual sections of this part.

Subpart B—Nondiscrimination and Access to Services

§ 39.21 What is the general non-discrimination requirement of this part?

(a) As a PVO, you must not do any of the following things, either directly or through a contractual, licensing, or other arrangement:

(1) You must not discriminate against any qualified individual with a disability, by reason of such disability, with respect to the individual's use of a vessel;

(2) You must not require a qualified individual with a disability to accept special services that the individual does not request;

(3) You must not exclude a qualified individual with a disability from or deny the person the benefit of any vessel transportation or related services that are available to other persons, except when specifically permitted by another section of this part; and

(4) You must not take any action against an individual (*e.g.*, refusing to provide transportation) because the individual asserts, on his or her own behalf or through or on behalf of others, rights protected by this part or the ADA.

(b)(1) As a PVO that is a private entity, you must make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless you can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations.

(2) As a PVO that is a public entity, you must make reasonable modifications in policies, practices, or proce-

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dures when necessary to avoid discrimination on the basis of disability, unless you can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities you offer.

§ 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

(a) If, as a PVO, you enter into a contractual or other arrangement or relationship with any other party to provide services to or affecting passengers, you must ensure that the other party meets the requirements of this part that would apply to you if you provided the service yourself.

(b) As a PVO, you must include an assurance of compliance with this part in your contracts or agreements with any contractors who provide to the public services that are subject to the requirements of this part. Noncompliance with this assurance is a material breach of the contract on the contractor's part. With respect to contracts or agreements existing on November 3, 2010, you must ensure the inclusion of this assurance by November 3, 2011 or on the next occasion on which the contract or agreement is renewed or amended, whichever comes first.

(1) This assurance must commit the contractor to compliance with all applicable provisions of this part in activities performed on behalf of the PVO.

(2) The assurance must also commit the contractor to implementing directives issued by your Complaints Resolution Officials (CROs) under § 39.103.

(c) As a PVO, you must also include such an assurance of compliance in your contracts or agreements of appointment with U.S. travel agents. With respect to contracts or agreements with U.S. travel agents existing on November 3, 2010, you must ensure the inclusion of this assurance by November 3, 2011 or on the next occasion on which the contract or agreement is renewed or amended, whichever comes first. You are not required to include such an assurance in contracts with foreign travel agents.

(d) You remain responsible for your contractors' and U.S. travel agents' compliance with this Part and with the

assurances in your contracts with them.

(e) It is not a defense to an enforcement action under this Part that your noncompliance resulted from action or inaction by a contractor or U.S. travel agent.

§ 39.25 May PVOs refuse to provide transportation or use of a vessel on the basis of disability?

(a) As a PVO, you must not refuse to provide transportation or use of a vessel to a passenger with a disability on the basis of his or her disability, except as specifically permitted by this part.

(b) You must not refuse to provide transportation or use of a vessel to a passenger with a disability because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) If you refuse to provide transportation or use of a vessel to a passenger on a basis relating to the individual's disability, you must provide to the person a written statement of the reason for the refusal. This statement must include the specific basis for your opinion that the refusal meets the standards of § 39.27 or is otherwise specifically permitted by this part. You must provide this written statement to the person within 10 calendar days of the refusal of transportation or use of the vessel.

§ 39.27 Can a PVO take action to deny transportation or restrict services to a passenger with a disability based on safety concerns?

(a) As a PVO, you may take action to deny transportation or restrict services to a passenger with a disability if necessitated by legitimate safety requirements. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Example 1 to paragraph 39.27(a): You may take such action in order to comply with Coast Guard safety regulations.

Example 2 to paragraph 39.27(a): You may take such action if accommodating a large or heavy wheelchair would, together with its occupant, create weight and balance problem that could affect adversely the seaworthiness

of the vessel or impede emergency egress from the vessel.

Example 3 to paragraph 39.27(a): You could restrict access to a lifeboat for a mobility device that would limit access to the lifeboat for other passengers.

(b) In taking action pursuant to legitimate safety requirements, you must take the action that imposes the minimum feasible burdens or limitations from the point of view of the passenger. For example, if you can meet legitimate safety requirements by a means short of refusing transportation to a passenger, you must do so.

(c) You may take action to deny transportation or restrict services to a passenger if the passenger poses a direct threat to others. In determining whether an individual poses a direct threat to the health or safety of others, the PVO must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

§ 39.29 May PVOs limit the number of passengers with a disability on a passenger vessel?

As a PVO, you must not limit the number of passengers with a disability other than individuals with a mobility disability on your vessel. However, if in the Captain's judgment, weight or stability issues are presented by the presence of mobility devices and would conflict with legitimate safety requirements pertaining to the vessel and its passengers, then the number of passengers with mobility aids may be limited, but only to the extent reasonable to prevent a avoid such a conflict.

§ 39.31 May PVOs limit access to transportation or use of a vessel on the basis that a passenger has a communicable disease?

(a) You must not take any of the following actions on the basis that a passenger has a communicable disease or infection, unless one of the conditions of paragraph (b) of this section exists: